Section 3.3 Project Reports / Deliverables

One Hundred Seventh Congress of the United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Wednesday, the third day of January, two thousand and one

An Act

To provide certain relief for small businesses from liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and to amend such Act to promote the cleanup and reuse of brownfields, to provide financial assistance for brownfields revitalization, to enhance State response programs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Small Business Liability Relief and Brownfields Revitalization Act".

TITLE I—SMALL BUSINESS LIABILITY PROTECTION

SEC. 101. SHORT TITLE.

This title may be cited as the "Small Business Liability Protection Act".

SEC. 102. SMALL BUSINESS LIABILITY RELIEF.

(a) EXEMPTIONS.—Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) is amended by adding at the end the following new subsections:

"(o) DE MICROMIS EXEMPTION.—

"(1) IN GENERAL.—Except as provided in paragraph (2), a person shall not be liable, with respect to response costs at a facility on the National Priorities List, under this Act if liability is based solely on paragraph (3) or (4) of subsection (a), and the person, except as provided in paragraph (4) of this subsection, can demonstrate that—

"(A) the total amount of the material containing hazardous substances that the person arranged for disposal or treatment of, arranged with a transporter for transport for disposal or treatment of, or accepted for transport for disposal or treatment, at the facility was less than 110 gallons of liquid materials or less than 200 pounds of solid materials (or such greater or lesser amounts as the Administrator may determine by regulation); and

"(B) all or part of the disposal, treatment, or transport concerned occurred before April 1, 2001.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply in a case in which—

"(A) the President determines that—

"(i) the materials containing hazardous substances referred to in paragraph (1) have contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration with respect to the facility; or

"(ii) the person has failed to comply with an information request or administrative subpoena issued by the President under this Act or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the facility; or

"(B) a person has been convicted of a criminal violation for the conduct to which the exemption would apply, and that conviction has not been vitiated on appeal or otherwise.

"(3) NO JUDICIAL REVIEW.—A determination by the President under paragraph (2)(A) shall not be subject to judicial review.

"(4) NONGOVERNMENTAL THIRD-PARTY CONTRIBUTION ACTIONS.—In the case of a contribution action, with respect to response costs at a facility on the National Priorities List, brought by a party, other than a Federal, State, or local government, under this Act, the burden of proof shall be on the party bringing the action to demonstrate that the conditions described in paragraph (1)(A) and (B) of this subsection are not met.

"(p) MUNICIPAL SOLID WASTE EXEMPTION.—

"(1) IN GENERAL.—Except as provided in paragraph (2) of this subsection, a person shall not be liable, with respect to response costs at a facility on the National Priorities List, under paragraph (3) of subsection (a) for municipal solid waste disposed of at a facility if the person, except as provided in paragraph (5) of this subsection, can demonstrate that the person is—

"(A) an owner, operator, or lessee of residential property from which all of the person's municipal solid waste was generated with respect to the facility;

"(B) a business entity (including a parent, subsidiary, or affiliate of the entity) that, during its 3 taxable years preceding the date of transmittal of written notification from the President of its potential liability under this section, employed on average not more than 100 full-time individuals, or the equivalent thereof, and that is a small business concern (within the meaning of the Small Business Act (15 U.S.C. 631 et seq.)) from which was generated all of the municipal solid waste attributable to the entity with respect to the facility; or

"(C) an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code that, during its taxable year preceding the date of transmittal of written notification from the President of its potential liability under this section, employed not more than 100 paid individuals at the location from which was generated all of the municipal

solid waste attributable to the organization with respect to the facility.

For purposes of this subsection, the term 'affiliate' has the meaning of that term provided in the definition of 'small business concern' in regulations promulgated by the Small Business Administration in accordance with the Small Business Act (15 U.S.C. 631 et seq.).

"(2) EXCEPTION.—Paragraph (1) shall not apply in a case in which the President determines that—

"(A) the municipal solid waste referred to in paragraph (1) has contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration with respect to the facility;

"(B) the person has failed to comply with an information request or administrative subpoena issued by the President under this Act; or

"(C) the person has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the facility.

"(3) NO JUDICIAL REVIEW.—A determination by the President under paragraph (2) shall not be subject to judicial review.

"(4) DEFINITION OF MUNICIPAL SOLID WASTE.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'municipal solid waste' means waste material—

"(i) generated by a household (including a single or multifamily residence); and

"(ii) generated by a commercial, industrial, or institutional entity, to the extent that the waste material—

"(I) is essentially the same as waste normally generated by a household;

"(II) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services; and

"(III) contains a relative quantity of hazardous substances no greater than the relative quantity of hazardous substances contained in waste material generated by a typical single-family household.

"(B) EXAMPLES.—Examples of municipal solid waste under subparagraph (A) include food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, elementary or secondary school science laboratory waste, and household hazardous waste.

"(C) EXCLUSIONS.—The term 'municipal solid waste' does not include—

"(i) combustion ash generated by resource recovery facilities or municipal incinerators; or

"(ii) waste material from manufacturing or processing operations (including pollution control operations) that is not essentially the same as waste normally generated by households.

"(5) BURDEN OF PROOF.—In the case of an action, with respect to response costs at a facility on the National Priorities List, brought under section 107 or 113 by—

"(A) a party, other than a Federal, State, or local government, with respect to municipal solid waste disposed of on or after April 1, 2001; or

"(B) any party with respect to municipal solid waste disposed of before April 1, 2001, the burden of proof shall be on the party bringing the action to demonstrate that the conditions described in paragraphs (1) and (4) for exemption for entities and organizations described in paragraph (1)(B) and (C) are not met.

"(6) CERTAIN ACTIONS NOT PERMITTED.—No contribution action may be brought by a party, other than a Federal, State, or local government, under this Act with respect to circumstances described in paragraph (1)(A).

"(7) COSTS AND FEES.—A nongovernmental entity that commences, after the date of the enactment of this subsection, a contribution action under this Act shall be liable to the defendant for all reasonable costs of defending the action, including all reasonable attorney's fees and expert witness fees, if the defendant is not liable for contribution based on an exemption under this subsection or subsection (o).".

(b) EXPEDITED SETTLEMENT.—Section 122(g) of such Act (42 U.S.C. 9622(g)) is amended by adding at the end the following new paragraphs:

"(7) REDUCTION IN SETTLEMENT AMOUNT BASED ON LIMITED ABILITY TO PAY.—

"(A) IN GENERAL.—The condition for settlement under this paragraph is that the potentially responsible party is a person who demonstrates to the President an inability or a limited ability to pay response costs.

"(B) CONSIDERATIONS.—In determining whether or not a demonstration is made under subparagraph (A) by a person, the President shall take into consideration the ability of the person to pay response costs and still maintain its basic business operations, including consideration of the overall financial condition of the person and demonstrable constraints on the ability of the person to raise revenues.

"(C) INFORMATION.—A person requesting settlement under this paragraph shall promptly provide the President with all relevant information needed to determine the ability of the person to pay response costs.

"(D) ALTERNATIVE PAYMENT METHODS.—If the President determines that a person is unable to pay its total settlement amount at the time of settlement, the President shall consider such alternative payment methods as may be necessary or appropriate.

"(8) ADDITIONAL CONDITIONS FOR EXPEDITED SETTLEMENTS.—

"(A) WAIVER OF CLAIMS.—The President shall require, as a condition for settlement under this subsection, that a potentially responsible party waive all of the claims (including a claim for contribution under this Act) that the party may have against other potentially responsible parties for response costs incurred with respect to the facility, unless the President determines that requiring a waiver would be unjust.

"(B) FAILURE TO COMPLY.—The President may decline to offer a settlement to a potentially responsible party under this subsection if the President determines that the potentially responsible party has failed to comply with any request for access or information or an administrative subpoena issued by the President under this Act or has impeded or is impeding, through action or inaction, the performance of a response action with respect to the facility.

"(C) RESPONSIBILITY TO PROVIDE INFORMATION AND ACCESS.—A potentially responsible party that enters into a settlement under this subsection shall not be relieved of the responsibility to provide any information or access requested in accordance with subsection (e)(3)(B) or section 104(e).

"(9) BASIS OF DETERMINATION.—If the President determines that a potentially responsible party is not eligible for settlement under this subsection, the President shall provide the reasons for the determination in writing to the potentially responsible party that requested a settlement under this subsection.

"(10) NOTIFICATION.—As soon as practicable after receipt of sufficient information to make a determination, the President shall notify any person that the President determines is eligible under paragraph (1) of the person's eligibility for an expedited settlement.

"(11) NO JUDICIAL REVIEW.—A determination by the President under paragraph (7), (8), (9), or (10) shall not be subject to judicial review.

"(12) NOTICE OF SETTLEMENT.—After a settlement under this subsection becomes final with respect to a facility, the President shall promptly notify potentially responsible parties at the facility that have not resolved their liability to the United States of the settlement.".

SEC. 103. EFFECT ON CONCLUDED ACTIONS.

The amendments made by this title shall not apply to or in any way affect any settlement lodged in, or judgment issued by, a United States District Court, or any administrative settlement or order entered into or issued by the United States or any State, before the date of the enactment of this Act.

TITLE II—BROWNFIELDS REVITALIZATION AND ENVIRONMENTAL RESTORATION

SEC. 201. SHORT TITLE.

This title may be cited as the "Brownfields Revitalization and Environmental Restoration Act of 2001".

Subtitle A—Brownfields Revitalization Funding

SEC. 211. BROWNFIELDS REVITALIZATION FUNDING.

(a) DEFINITION OF BROWNFIELD SITE.—Section 101 of the Comprehensive Environmental Response, Compensation, and Liability

Act of 1980 (42 U.S.C. 9601) is amended by adding at the end the following:

"(39) BROWNFIELD SITE.—

"(A) IN GENERAL.—The term 'brownfield site' means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

"(B) EXCLUSIONS.—The term 'brownfield site' does not include—

"(i) a facility that is the subject of a planned or ongoing removal action under this title;

"(ii) a facility that is listed on the National Priorities List or is proposed for listing;

"(iii) a facility that is the subject of a unilateral administrative order, a court order, an administrative order on consent or judicial consent decree that has been issued to or entered into by the parties under this Act;

"(iv) a facility that is the subject of a unilateral administrative order, a court order, an administrative order on consent or judicial consent decree that has been issued to or entered into by the parties, or a facility to which a permit has been issued by the United States or an authorized State under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1321), the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), or the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

"(v) a facility that—

"(I) is subject to corrective action under section 3004(u) or 3008(h) of the Solid Waste Disposal Act (42 U.S.C. 6924(u), 6928(h)); and

"(II) to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures;

"(vi) a land disposal unit with respect to which—

"(I) a closure notification under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) has been submitted; and

"(II) closure requirements have been specified in a closure plan or permit;

"(vii) a facility that is subject to the jurisdiction, custody, or control of a department, agency, or instrumentality of the United States, except for land held in trust by the United States for an Indian tribe;

"(viii) a portion of a facility—

"(I) at which there has been a release of polychlorinated biphenyls; and

"(II) that is subject to remediation under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); or

"(ix) a portion of a facility, for which portion, assistance for response activity has been obtained under subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking Underground Storage

Tank Trust Fund established under section 9508 of the Internal Revenue Code of 1986.

"(C) SITE-BY-SITE DETERMINATIONS.—Notwithstanding subparagraph (B) and on a site-by-site basis, the President may authorize financial assistance under section 104(k) to an eligible entity at a site included in clause (i), (iv), (v), (vi), (viii), or (ix) of subparagraph (B) if the President finds that financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes.

"(D) ADDITIONAL AREAS.—For the purposes of section 104(k), the term 'brownfield site' includes a site that—

"(i) meets the definition of 'brownfield site' under subparagraphs (A) through (C); and

"(ii)(I) is contaminated by a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

"(II)(aa) is contaminated by petroleum or a petroleum product excluded from the definition of 'hazardous substance' under section 101; and

"(bb) is a site determined by the Administrator or the State, as appropriate, to be—

"(AA) of relatively low risk, as compared with other petroleum-only sites in the State; and

"(BB) a site for which there is no viable responsible party and which will be assessed, investigated, or cleaned up by a person that is not potentially liable for cleaning up the site; and

"(cc) is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act (42 U.S.C. 6991b(h)); or

"(III) is mine-scarred land.".

(b) BROWNFIELDS REVITALIZATION FUNDING.—Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604) is amended by adding at the end the following:

"(k) BROWNFIELDS REVITALIZATION FUNDING.—

"(1) DEFINITION OF ELIGIBLE ENTITY.—In this subsection, the term 'eligible entity' means—

"(A) a general purpose unit of local government;

"(B) a land clearance authority or other quasi-governmental entity that operates under the supervision and control of or as an agent of a general purpose unit of local government;

"(C) a government entity created by a State legislature;

"(D) a regional council or group of general purpose units of local government;

"(E) a redevelopment agency that is chartered or otherwise sanctioned by a State;

"(F) a State;

"(G) an Indian Tribe other than in Alaska; or

"(H) an Alaska Native Regional Corporation and an Alaska Native Village Corporation as those terms are defined in the Alaska Native Claims Settlement Act (43

U.S.C. 1601 and following) and the Metlakatla Indian community.

"(2) BROWNFIELD SITE CHARACTERIZATION AND ASSESSMENT GRANT PROGRAM.—

"(A) ESTABLISHMENT OF PROGRAM.—The Administrator shall establish a program to—

"(i) provide grants to inventory, characterize, assess, and conduct planning related to brownfield sites under subparagraph (B); and

"(ii) perform targeted site assessments at brownfield sites.

"(B) ASSISTANCE FOR SITE CHARACTERIZATION AND ASSESSMENT.—

"(i) IN GENERAL.—On approval of an application made by an eligible entity, the Administrator may make a grant to the eligible entity to be used for programs to inventory, characterize, assess, and conduct planning related to one or more brownfield sites.

"(ii) SITE CHARACTERIZATION AND ASSESSMENT.—A site characterization and assessment carried out with the use of a grant under clause (i) shall be performed in accordance with section 101(35)(B).

"(3) GRANTS AND LOANS FOR BROWNFIELD REMEDIATION.—

"(A) GRANTS PROVIDED BY THE PRESIDENT.—Subject to paragraphs (4) and (5), the President shall establish a program to provide grants to—

"(i) eligible entities, to be used for capitalization of revolving loan funds; and

"(ii) eligible entities or nonprofit organizations, where warranted, as determined by the President based on considerations under subparagraph (C), to be used directly for remediation of one or more brownfield sites owned by the entity or organization that receives the grant and in amounts not to exceed $200,000 for each site to be remediated.

"(B) LOANS AND GRANTS PROVIDED BY ELIGIBLE ENTITIES.—An eligible entity that receives a grant under subparagraph (A)(i) shall use the grant funds to provide assistance for the remediation of brownfield sites in the form of—

"(i) one or more loans to an eligible entity, a site owner, a site developer, or another person; or

"(ii) one or more grants to an eligible entity or other nonprofit organization, where warranted, as determined by the eligible entity that is providing the assistance, based on considerations under subparagraph (C), to remediate sites owned by the eligible entity or nonprofit organization that receives the grant.

"(C) CONSIDERATIONS.—In determining whether a grant under subparagraph (A)(ii) or (B)(ii) is warranted, the President or the eligible entity, as the case may be, shall take into consideration—

"(i) the extent to which a grant will facilitate the creation of, preservation of, or addition to a park, a greenway, undeveloped property, recreational property, or other property used for nonprofit purposes;

"(ii) the extent to which a grant will meet the needs of a community that has an inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community;

"(iii) the extent to which a grant will facilitate the use or reuse of existing infrastructure;

"(iv) the benefit of promoting the long-term availability of funds from a revolving loan fund for brownfield remediation; and

"(v) such other similar factors as the Administrator considers appropriate to consider for the purposes of this subsection.

"(D) TRANSITION.—Revolving loan funds that have been established before the date of the enactment of this subsection may be used in accordance with this paragraph.

"(4) GENERAL PROVISIONS.—

"(A) MAXIMUM GRANT AMOUNT.—

"(i) BROWNFIELD SITE CHARACTERIZATION AND ASSESSMENT.—

"(I) IN GENERAL.—A grant under paragraph (2) may be awarded to an eligible entity on a community-wide or site-by-site basis, and shall not exceed, for any individual brownfield site covered by the grant, $200,000.

"(II) WAIVER.—The Administrator may waive the $200,000 limitation under subclause (I) to permit the brownfield site to receive a grant of not to exceed $350,000, based on the anticipated level of contamination, size, or status of ownership of the site.

"(ii) BROWNFIELD REMEDIATION.—A grant under paragraph (3)(A)(i) may be awarded to an eligible entity on a community-wide or site-by-site basis, not to exceed $1,000,000 per eligible entity. The Administrator may make an additional grant to an eligible entity described in the previous sentence for any year after the year for which the initial grant is made, taking into consideration—

"(I) the number of sites and number of communities that are addressed by the revolving loan fund;

"(II) the demand for funding by eligible entities that have not previously received a grant under this subsection;

"(III) the demonstrated ability of the eligible entity to use the revolving loan fund to enhance remediation and provide funds on a continuing basis; and

"(IV) such other similar factors as the Administrator considers appropriate to carry out this subsection.

"(B) PROHIBITION.—

"(i) IN GENERAL.—No part of a grant or loan under this subsection may be used for the payment of—

"(I) a penalty or fine;

"(II) a Federal cost-share requirement;

"(III) an administrative cost;

"(IV) a response cost at a brownfield site for which the recipient of the grant or loan is potentially liable under section 107; or

"(V) a cost of compliance with any Federal law (including a Federal law specified in section 101(39)(B)), excluding the cost of compliance with laws applicable to the cleanup.

"(ii) EXCLUSIONS.—For the purposes of clause (i)(III), the term 'administrative cost' does not include the cost of—

"(I) investigation and identification of the extent of contamination;

"(II) design and performance of a response action; or

"(III) monitoring of a natural resource.

"(C) ASSISTANCE FOR DEVELOPMENT OF LOCAL GOVERNMENT SITE REMEDIATION PROGRAMS.—A local government that receives a grant under this subsection may use not to exceed 10 percent of the grant funds to develop and implement a brownfields program that may include—

"(i) monitoring the health of populations exposed to one or more hazardous substances from a brownfield site; and

"(ii) monitoring and enforcement of any institutional control used to prevent human exposure to any hazardous substance from a brownfield site.

"(D) INSURANCE.—A recipient of a grant or loan awarded under paragraph (2) or (3) that performs a characterization, assessment, or remediation of a brownfield site may use a portion of the grant or loan to purchase insurance for the characterization, assessment, or remediation of that site.

"(5) GRANT APPLICATIONS.—

"(A) SUBMISSION.—

"(i) IN GENERAL.—

"(I) APPLICATION.—An eligible entity may submit to the Administrator, through a regional office of the Environmental Protection Agency and in such form as the Administrator may require, an application for a grant under this subsection for one or more brownfield sites (including information on the criteria used by the Administrator to rank applications under subparagraph (C), to the extent that the information is available).

"(II) NCP REQUIREMENTS.—The Administrator may include in any requirement for submission of an application under subclause (I) a requirement of the National Contingency Plan only to the extent that the requirement is relevant and appropriate to the program under this subsection.

"(ii) COORDINATION.—The Administrator shall coordinate with other Federal agencies to assist in making eligible entities aware of other available Federal resources.

"(iii) GUIDANCE.—The Administrator shall publish guidance to assist eligible entities in applying for grants under this subsection.

"(B) APPROVAL.—The Administrator shall—

"(i) at least annually, complete a review of applications for grants that are received from eligible entities under this subsection; and

"(ii) award grants under this subsection to eligible entities that the Administrator determines have the highest rankings under the ranking criteria established under subparagraph (C).

"(C) RANKING CRITERIA.—The Administrator shall establish a system for ranking grant applications received under this paragraph that includes the following criteria:

"(i) The extent to which a grant will stimulate the availability of other funds for environmental assessment or remediation, and subsequent reuse, of an area in which one or more brownfield sites are located.

"(ii) The potential of the proposed project or the development plan for an area in which one or more brownfield sites are located to stimulate economic development of the area on completion of the cleanup.

"(iii) The extent to which a grant would address or facilitate the identification and reduction of threats to human health and the environment, including threats in areas in which there is a greater-than-normal incidence of diseases or conditions (including cancer, asthma, or birth defects) that may be associated with exposure to hazardous substances, pollutants, or contaminants.

"(iv) The extent to which a grant would facilitate the use or reuse of existing infrastructure.

"(v) The extent to which a grant would facilitate the creation of, preservation of, or addition to a park, a greenway, undeveloped property, recreational property, or other property used for nonprofit purposes.

"(vi) The extent to which a grant would meet the needs of a community that has an inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community.

"(vii) The extent to which the applicant is eligible for funding from other sources.

"(viii) The extent to which a grant will further the fair distribution of funding between urban and nonurban areas.

"(ix) The extent to which the grant provides for involvement of the local community in the process of making decisions relating to cleanup and future use of a brownfield site.

"(x) The extent to which a grant would address or facilitate the identification and reduction of threats to the health or welfare of children, pregnant women, minority or low-income communities, or other sensitive populations.

"(6) IMPLEMENTATION OF BROWNFIELDS PROGRAMS.—

"(A) ESTABLISHMENT OF PROGRAM.—The Administrator may provide, or fund eligible entities or nonprofit organizations to provide, training, research, and technical assistance to individuals and organizations, as appropriate, to facilitate the inventory of brownfield sites, site assessments, remediation of brownfield sites, community involvement, or site preparation.

"(B) FUNDING RESTRICTIONS.—The total Federal funds to be expended by the Administrator under this paragraph shall not exceed 15 percent of the total amount appropriated to carry out this subsection in any fiscal year.

"(7) AUDITS.—

"(A) IN GENERAL.—The Inspector General of the Environmental Protection Agency shall conduct such reviews or audits of grants and loans under this subsection as the Inspector General considers necessary to carry out this subsection.

"(B) PROCEDURE.—An audit under this subparagraph shall be conducted in accordance with the auditing procedures of the General Accounting Office, including chapter 75 of title 31, United States Code.

"(C) VIOLATIONS.—If the Administrator determines that a person that receives a grant or loan under this subsection has violated or is in violation of a condition of the grant, loan, or applicable Federal law, the Administrator may—

"(i) terminate the grant or loan;

"(ii) require the person to repay any funds received; and

"(iii) seek any other legal remedies available to the Administrator.

"(D) REPORT TO CONGRESS.—Not later than 3 years after the date of the enactment of this subsection, the Inspector General of the Environmental Protection Agency shall submit to Congress a report that provides a description of the management of the program (including a description of the allocation of funds under this subsection).

"(8) LEVERAGING.—An eligible entity that receives a grant under this subsection may use the grant funds for a portion of a project at a brownfield site for which funding is received from other sources if the grant funds are used only for the purposes described in paragraph (2) or (3).

"(9) AGREEMENTS.—Each grant or loan made under this subsection shall—

"(A) include a requirement of the National Contingency Plan only to the extent that the requirement is relevant and appropriate to the program under this subsection, as determined by the Administrator; and

"(B) be subject to an agreement that—

"(i) requires the recipient to—

"(I) comply with all applicable Federal and State laws; and

"(II) ensure that the cleanup protects human health and the environment;

"(ii) requires that the recipient use the grant or loan exclusively for purposes specified in paragraph (2) or (3), as applicable;

"(iii) in the case of an application by an eligible entity under paragraph (3)(A), requires the eligible entity to pay a matching share (which may be in the form of a contribution of labor, material, or services) of at least 20 percent, from non-Federal sources of funding, unless the Administrator determines that the matching share would place an undue hardship on the eligible entity; and

"(iv) contains such other terms and conditions as the Administrator determines to be necessary to carry out this subsection.

"(10) FACILITY OTHER THAN BROWNFIELD SITE.—The fact that a facility may not be a brownfield site within the meaning of section 101(39)(A) has no effect on the eligibility of the facility for assistance under any other provision of Federal law.

"(11) EFFECT ON FEDERAL LAWS.—Nothing in this subsection affects any liability or response authority under any Federal law, including—

"(A) this Act (including the last sentence of section 101(14));

"(B) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

"(C) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

"(D) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); and

"(E) the Safe Drinking Water Act (42 U.S.C. 300f et seq.).

"(12) FUNDING.—

"(A) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $200,000,000 for each of fiscal years 2002 through 2006.

"(B) USE OF CERTAIN FUNDS.—Of the amount made available under subparagraph (A), $50,000,000, or, if the amount made available is less than $200,000,000, 25 percent of the amount made available, shall be used for site characterization, assessment, and remediation of facilities described in section 101(39)(D)(ii)(II).".

Subtitle B—Brownfields Liability Clarifications

SEC. 221. CONTIGUOUS PROPERTIES.

Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) is amended by adding at the end the following:

"(q) CONTIGUOUS PROPERTIES.—

"(1) NOT CONSIDERED TO BE AN OWNER OR OPERATOR.—

"(A) IN GENERAL.—A person that owns real property that is contiguous to or otherwise similarly situated with respect to, and that is or may be contaminated by a release or threatened release of a hazardous substance from, real

property that is not owned by that person shall not be considered to be an owner or operator of a vessel or facility under paragraph (1) or (2) of subsection (a) solely by reason of the contamination if—

"(i) the person did not cause, contribute, or consent to the release or threatened release;

"(ii) the person is not—

"(I) potentially liable, or affiliated with any other person that is potentially liable, for response costs at a facility through any direct or indirect familial relationship or any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship that is created by a contract for the sale of goods or services); or

"(II) the result of a reorganization of a business entity that was potentially liable;

"(iii) the person takes reasonable steps to—

"(I) stop any continuing release;

"(II) prevent any threatened future release; and

"(III) prevent or limit human, environmental, or natural resource exposure to any hazardous substance released on or from property owned by that person;

"(iv) the person provides full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at the vessel or facility from which there has been a release or threatened release (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action or natural resource restoration at the vessel or facility);

"(v) the person—

"(I) is in compliance with any land use restrictions established or relied on in connection with the response action at the facility; and

"(II) does not impede the effectiveness or integrity of any institutional control employed in connection with a response action;

"(vi) the person is in compliance with any request for information or administrative subpoena issued by the President under this Act;

"(vii) the person provides all legally required notices with respect to the discovery or release of any hazardous substances at the facility; and

"(viii) at the time at which the person acquired the property, the person—

"(I) conducted all appropriate inquiry within the meaning of section 101(35)(B) with respect to the property; and

"(II) did not know or have reason to know that the property was or could be contaminated by a release or threatened release of one or more hazardous substances from other real property not owned or operated by the person.

"(B) DEMONSTRATION.—To qualify as a person described in subparagraph (A), a person must establish by a preponderance of the evidence that the conditions in clauses (i) through (viii) of subparagraph (A) have been met.

"(C) BONA FIDE PROSPECTIVE PURCHASER.—Any person that does not qualify as a person described in this paragraph because the person had, or had reason to have, knowledge specified in subparagraph (A)(viii) at the time of acquisition of the real property may qualify as a bona fide prospective purchaser under section 101(40) if the person is otherwise described in that section.

"(D) GROUND WATER.—With respect to a hazardous substance from one or more sources that are not on the property of a person that is a contiguous property owner that enters ground water beneath the property of the person solely as a result of subsurface migration in an aquifer, subparagraph (A)(iii) shall not require the person to conduct ground water investigations or to install ground water remediation systems, except in accordance with the policy of the Environmental Protection Agency concerning owners of property containing contaminated aquifers, dated May 24, 1995.

"(2) EFFECT OF LAW.—With respect to a person described in this subsection, nothing in this subsection—

"(A) limits any defense to liability that may be available to the person under any other provision of law; or

"(B) imposes liability on the person that is not otherwise imposed by subsection (a).

"(3) ASSURANCES.—The Administrator may—

"(A) issue an assurance that no enforcement action under this Act will be initiated against a person described in paragraph (1); and

"(B) grant a person described in paragraph (1) protection against a cost recovery or contribution action under section 113(f).".

SEC. 222. PROSPECTIVE PURCHASERS AND WINDFALL LIENS.

(a) DEFINITION OF BONA FIDE PROSPECTIVE PURCHASER.—Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601) (as amended by section 211(a) of this Act) is amended by adding at the end the following:

"(40) BONA FIDE PROSPECTIVE PURCHASER.—The term 'bona fide prospective purchaser' means a person (or a tenant of a person) that acquires ownership of a facility after the date of the enactment of this paragraph and that establishes each of the following by a preponderance of the evidence:

"(A) DISPOSAL PRIOR TO ACQUISITION.—All disposal of hazardous substances at the facility occurred before the person acquired the facility.

"(B) INQUIRIES.—

"(i) IN GENERAL.—The person made all appropriate inquiries into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices in accordance with clauses (ii) and (iii).

"(ii) STANDARDS AND PRACTICES.—The standards and practices referred to in clauses (ii) and (iv) of paragraph (35)(B) shall be considered to satisfy the requirements of this subparagraph.

"(iii) RESIDENTIAL USE.—In the case of property in residential or other similar use at the time of purchase by a nongovernmental or noncommercial entity, a facility inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph.

"(C) NOTICES.—The person provides all legally required notices with respect to the discovery or release of any hazardous substances at the facility.

"(D) CARE.—The person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to—

"(i) stop any continuing release;

"(ii) prevent any threatened future release; and

"(iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance.

"(E) COOPERATION, ASSISTANCE, AND ACCESS.—The person provides full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at a vessel or facility (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response actions or natural resource restoration at the vessel or facility).

"(F) INSTITUTIONAL CONTROL.—The person—

"(i) is in compliance with any land use restrictions established or relied on in connection with the response action at a vessel or facility; and

"(ii) does not impede the effectiveness or integrity of any institutional control employed at the vessel or facility in connection with a response action.

"(G) REQUESTS; SUBPOENAS.—The person complies with any request for information or administrative subpoena issued by the President under this Act.

"(H) NO AFFILIATION.—The person is not—

"(i) potentially liable, or affiliated with any other person that is potentially liable, for response costs at a facility through—

"(I) any direct or indirect familial relationship; or

"(II) any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship that is created by the instruments by which title to the facility is conveyed or financed or by a contract for the sale of goods or services); or

"(ii) the result of a reorganization of a business entity that was potentially liable.".

(b) PROSPECTIVE PURCHASER AND WINDFALL LIEN.—Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) (as amended by this Act) is further amended by adding at the end the following:

"(r) PROSPECTIVE PURCHASER AND WINDFALL LIEN.—

"(1) LIMITATION ON LIABILITY.—Notwithstanding subsection (a)(1), a bona fide prospective purchaser whose potential liability for a release or threatened release is based solely on the purchaser's being considered to be an owner or operator of a facility shall not be liable as long as the bona fide prospective purchaser does not impede the performance of a response action or natural resource restoration.

"(2) LIEN.—If there are unrecovered response costs incurred by the United States at a facility for which an owner of the facility is not liable by reason of paragraph (1), and if each of the conditions described in paragraph (3) is met, the United States shall have a lien on the facility, or may by agreement with the owner, obtain from the owner a lien on any other property or other assurance of payment satisfactory to the Administrator, for the unrecovered response costs.

"(3) CONDITIONS.—The conditions referred to in paragraph (2) are the following:

"(A) RESPONSE ACTION.—A response action for which there are unrecovered costs of the United States is carried out at the facility.

"(B) FAIR MARKET VALUE.—The response action increases the fair market value of the facility above the fair market value of the facility that existed before the response action was initiated.

"(4) AMOUNT; DURATION.—A lien under paragraph (2)—

"(A) shall be in an amount not to exceed the increase in fair market value of the property attributable to the response action at the time of a sale or other disposition of the property;

"(B) shall arise at the time at which costs are first incurred by the United States with respect to a response action at the facility;

"(C) shall be subject to the requirements of subsection (l)(3); and

"(D) shall continue until the earlier of—

"(i) satisfaction of the lien by sale or other means; or

"(ii) notwithstanding any statute of limitations under section 113, recovery of all response costs incurred at the facility.".

SEC. 223. INNOCENT LANDOWNERS.

Section 101(35) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(35)) is amended—

(1) in subparagraph (A)—

(A) in the first sentence, in the matter preceding clause (i), by striking "deeds or" and inserting "deeds, easements, leases, or"; and

(B) in the second sentence—

(i) by striking "he" and inserting "the defendant"; and

(ii) by striking the period at the end and inserting ", provides full cooperation, assistance, and facility access to the persons that are authorized to conduct

response actions at the facility (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action at the facility), is in compliance with any land use restrictions established or relied on in connection with the response action at a facility, and does not impede the effectiveness or integrity of any institutional control employed at the facility in connection with a response action."; and

(2) by striking subparagraph (B) and inserting the following:

"(B) REASON TO KNOW.—

"(i) ALL APPROPRIATE INQUIRIES.—To establish that the defendant had no reason to know of the matter described in subparagraph (A)(i), the defendant must demonstrate to a court that—

"(I) on or before the date on which the defendant acquired the facility, the defendant carried out all appropriate inquiries, as provided in clauses (ii) and (iv), into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices; and

"(II) the defendant took reasonable steps to—

"(aa) stop any continuing release;

"(bb) prevent any threatened future release; and

"(cc) prevent or limit any human, environmental, or natural resource exposure to any previously released hazardous substance.

"(ii) STANDARDS AND PRACTICES.—Not later than 2 years after the date of the enactment of the Brownfields Revitalization and Environmental Restoration Act of 2001, the Administrator shall by regulation establish standards and practices for the purpose of satisfying the requirement to carry out all appropriate inquiries under clause (i).

"(iii) CRITERIA.—In promulgating regulations that establish the standards and practices referred to in clause (ii), the Administrator shall include each of the following:

"(I) The results of an inquiry by an environmental professional.

"(II) Interviews with past and present owners, operators, and occupants of the facility for the purpose of gathering information regarding the potential for contamination at the facility.

"(III) Reviews of historical sources, such as chain of title documents, aerial photographs, building department records, and land use records, to determine previous uses and occupancies of the real property since the property was first developed.

"(IV) Searches for recorded environmental cleanup liens against the facility that are filed under Federal, State, or local law.

"(V) Reviews of Federal, State, and local government records, waste disposal records, underground storage tank records, and hazardous waste handling, generation, treatment, disposal, and spill records, concerning contamination at or near the facility.

"(VI) Visual inspections of the facility and of adjoining properties.

"(VII) Specialized knowledge or experience on the part of the defendant.

"(VIII) The relationship of the purchase price to the value of the property, if the property was not contaminated.

"(IX) Commonly known or reasonably ascertainable information about the property.

"(X) The degree of obviousness of the presence or likely presence of contamination at the property, and the ability to detect the contamination by appropriate investigation.

"(iv) INTERIM STANDARDS AND PRACTICES.—

"(I) PROPERTY PURCHASED BEFORE MAY 31, 1997.—With respect to property purchased before May 31, 1997, in making a determination with respect to a defendant described in clause (i), a court shall take into account—

"(aa) any specialized knowledge or experience on the part of the defendant;

"(bb) the relationship of the purchase price to the value of the property, if the property was not contaminated;

"(cc) commonly known or reasonably ascertainable information about the property;

"(dd) the obviousness of the presence or likely presence of contamination at the property; and

"(ee) the ability of the defendant to detect the contamination by appropriate inspection.

"(II) PROPERTY PURCHASED ON OR AFTER MAY 31, 1997.—With respect to property purchased on or after May 31, 1997, and until the Administrator promulgates the regulations described in clause (ii), the procedures of the American Society for Testing and Materials, including the document known as 'Standard E1527–97', entitled 'Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process', shall satisfy the requirements in clause (i).

"(v) SITE INSPECTION AND TITLE SEARCH.—In the case of property for residential use or other similar use purchased by a nongovernmental or noncommercial entity, a facility inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph.".

Subtitle C—State Response Programs

SEC. 231. STATE RESPONSE PROGRAMS.

(a) DEFINITIONS.—Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601) (as amended by this Act) is further amended by adding at the end the following:

"(41) ELIGIBLE RESPONSE SITE.—

"(A) IN GENERAL.—The term 'eligible response site' means a site that meets the definition of a brownfield site in subparagraphs (A) and (B) of paragraph (39), as modified by subparagraphs (B) and (C) of this paragraph.

"(B) INCLUSIONS.—The term 'eligible response site' includes—

"(i) notwithstanding paragraph (39)(B)(ix), a portion of a facility, for which portion assistance for response activity has been obtained under subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking Underground Storage Tank Trust Fund established under section 9508 of the Internal Revenue Code of 1986; or

"(ii) a site for which, notwithstanding the exclusions provided in subparagraph (C) or paragraph (39)(B), the President determines, on a site-by-site basis and after consultation with the State, that limitations on enforcement under section 128 at sites specified in clause (iv), (v), (vi) or (viii) of paragraph (39)(B) would be appropriate and will—

"(I) protect human health and the environment; and

"(II) promote economic development or facilitate the creation of, preservation of, or addition to a park, a greenway, undeveloped property, recreational property, or other property used for nonprofit purposes.

"(C) EXCLUSIONS.—The term 'eligible response site' does not include—

"(i) a facility for which the President—

"(I) conducts or has conducted a preliminary assessment or site inspection; and

"(II) after consultation with the State, determines or has determined that the site obtains a preliminary score sufficient for possible listing on the National Priorities List, or that the site otherwise qualifies for listing on the National Priorities List; unless the President has made a determination that no further Federal action will be taken; or

"(ii) facilities that the President determines warrant particular consideration as identified by regulation, such as sites posing a threat to a sole-source drinking water aquifer or a sensitive ecosystem.".

(b) STATE RESPONSE PROGRAMS.—Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) is amended by adding at the end the following:

"SEC. 128. STATE RESPONSE PROGRAMS.

"(a) ASSISTANCE TO STATES.—

"(1) IN GENERAL.—

"(A) STATES.—The Administrator may award a grant to a State or Indian tribe that—

"(i) has a response program that includes each of the elements, or is taking reasonable steps to include each of the elements, listed in paragraph (2); or

"(ii) is a party to a memorandum of agreement with the Administrator for voluntary response programs.

"(B) USE OF GRANTS BY STATES.—

"(i) IN GENERAL.—A State or Indian tribe may use a grant under this subsection to establish or enhance the response program of the State or Indian tribe.

"(ii) ADDITIONAL USES.—In addition to the uses under clause (i), a State or Indian tribe may use a grant under this subsection to—

"(I) capitalize a revolving loan fund for brownfield remediation under section 104(k)(3); or

"(II) purchase insurance or develop a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions under a State response program.

"(2) ELEMENTS.—The elements of a State or Indian tribe response program referred to in paragraph (1)(A)(i) are the following:

"(A) Timely survey and inventory of brownfield sites in the State.

"(B) Oversight and enforcement authorities or other mechanisms, and resources, that are adequate to ensure that—

"(i) a response action will—

"(I) protect human health and the environment; and

"(II) be conducted in accordance with applicable Federal and State law; and

"(ii) if the person conducting the response action fails to complete the necessary response activities, including operation and maintenance or long-term monitoring activities, the necessary response activities are completed.

"(C) Mechanisms and resources to provide meaningful opportunities for public participation, including—

"(i) public access to documents that the State, Indian tribe, or party conducting the cleanup is relying on or developing in making cleanup decisions or conducting site activities;

"(ii) prior notice and opportunity for comment on proposed cleanup plans and site activities; and

"(iii) a mechanism by which—

"(I) a person that is or may be affected by a release or threatened release of a hazardous substance, pollutant, or contaminant at a brownfield site located in the community in which

the person works or resides may request the conduct of a site assessment; and

"(II) an appropriate State official shall consider and appropriately respond to a request under subclause (I).

"(D) Mechanisms for approval of a cleanup plan, and a requirement for verification by and certification or similar documentation from the State, an Indian tribe, or a licensed site professional to the person conducting a response action indicating that the response is complete.

"(3) FUNDING.—There is authorized to be appropriated to carry out this subsection $50,000,000 for each of fiscal years 2002 through 2006.

"(b) ENFORCEMENT IN CASES OF A RELEASE SUBJECT TO STATE PROGRAM.—

"(1) ENFORCEMENT.—

"(A) IN GENERAL.— Except as provided in subparagraph (B) and subject to subparagraph (C), in the case of an eligible response site at which—

"(i) there is a release or threatened release of a hazardous substance, pollutant, or contaminant; and

"(ii) a person is conducting or has completed a response action regarding the specific release that is addressed by the response action that is in compliance with the State program that specifically governs response actions for the protection of public health and the environment,

the President may not use authority under this Act to take an administrative or judicial enforcement action under section 106(a) or to take a judicial enforcement action to recover response costs under section 107(a) against the person regarding the specific release that is addressed by the response action.

"(B) EXCEPTIONS.—The President may bring an administrative or judicial enforcement action under this Act during or after completion of a response action described in subparagraph (A) with respect to a release or threatened release at an eligible response site described in that subparagraph if—

"(i) the State requests that the President provide assistance in the performance of a response action;

"(ii) the Administrator determines that contamination has migrated or will migrate across a State line, resulting in the need for further response action to protect human health or the environment, or the President determines that contamination has migrated or is likely to migrate onto property subject to the jurisdiction, custody, or control of a department, agency, or instrumentality of the United States and may impact the authorized purposes of the Federal property;

"(iii) after taking into consideration the response activities already taken, the Administrator determines that—

"(I) a release or threatened release may present an imminent and substantial endangerment to public health or welfare or the environment; and

"(II) additional response actions are likely to be necessary to address, prevent, limit, or mitigate the release or threatened release; or

"(iv) the Administrator, after consultation with the State, determines that information, that on the earlier of the date on which cleanup was approved or completed, was not known by the State, as recorded in documents prepared or relied on in selecting or conducting the cleanup, has been discovered regarding the contamination or conditions at a facility such that the contamination or conditions at the facility present a threat requiring further remediation to protect public health or welfare or the environment. Consultation with the State shall not limit the ability of the Administrator to make this determination.

"(C) PUBLIC RECORD.—The limitations on the authority of the President under subparagraph (A) apply only at sites in States that maintain, update not less than annually, and make available to the public a record of sites, by name and location, at which response actions have been completed in the previous year and are planned to be addressed under the State program that specifically governs response actions for the protection of public health and the environment in the upcoming year. The public record shall identify whether or not the site, on completion of the response action, will be suitable for unrestricted use and, if not, shall identify the institutional controls relied on in the remedy. Each State and tribe receiving financial assistance under subsection (a) shall maintain and make available to the public a record of sites as provided in this paragraph.

"(D) EPA NOTIFICATION.—

"(i) IN GENERAL.—In the case of an eligible response site at which there is a release or threatened release of a hazardous substance, pollutant, or contaminant and for which the Administrator intends to carry out an action that may be barred under subparagraph (A), the Administrator shall—

"(I) notify the State of the action the Administrator intends to take; and

"(II)(aa) wait 48 hours for a reply from the State under clause (ii); or

"(bb) if the State fails to reply to the notification or if the Administrator makes a determination under clause (iii), take immediate action under that clause.

"(ii) STATE REPLY.—Not later than 48 hours after a State receives notice from the Administrator under clause (i), the State shall notify the Administrator if—

"(I) the release at the eligible response site is or has been subject to a cleanup conducted under a State program; and

"(II) the State is planning to abate the release or threatened release, any actions that are planned.

"(iii) IMMEDIATE FEDERAL ACTION.—The Administrator may take action immediately after giving

notification under clause (i) without waiting for a State reply under clause (ii) if the Administrator determines that one or more exceptions under subparagraph (B) are met.

"(E) REPORT TO CONGRESS.—Not later than 90 days after the date of initiation of any enforcement action by the President under clause (ii), (iii), or (iv) of subparagraph (B), the President shall submit to Congress a report describing the basis for the enforcement action, including specific references to the facts demonstrating that enforcement action is permitted under subparagraph (B).

"(2) SAVINGS PROVISION.—

"(A) COSTS INCURRED PRIOR TO LIMITATIONS.—Nothing in paragraph (1) precludes the President from seeking to recover costs incurred prior to the date of the enactment of this section or during a period in which the limitations of paragraph (1)(A) were not applicable.

"(B) EFFECT ON AGREEMENTS BETWEEN STATES AND EPA.—Nothing in paragraph (1)—

"(i) modifies or otherwise affects a memorandum of agreement, memorandum of understanding, or any similar agreement relating to this Act between a State agency or an Indian tribe and the Administrator that is in effect on or before the date of the enactment of this section (which agreement shall remain in effect, subject to the terms of the agreement); or

"(ii) limits the discretionary authority of the President to enter into or modify an agreement with a State, an Indian tribe, or any other person relating to the implementation by the President of statutory authorities.

"(3) EFFECTIVE DATE.—This subsection applies only to response actions conducted after February 15, 2001.

"(c) EFFECT ON FEDERAL LAWS.—Nothing in this section affects any liability or response authority under any Federal law, including—

"(1) this Act, except as provided in subsection (b);

"(2) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

"(3) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

"(4) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); and

"(5) the Safe Drinking Water Act (42 U.S.C. 300f et seq.).".

SEC. 232. ADDITIONS TO NATIONAL PRIORITIES LIST.

Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605) is amended by adding at the end the following:

"(h) NPL DEFERRAL.—

"(1) DEFERRAL TO STATE VOLUNTARY CLEANUPS.—At the request of a State and subject to paragraphs (2) and (3), the President generally shall defer final listing of an eligible response site on the National Priorities List if the President determines that—

"(A) the State, or another party under an agreement with or order from the State, is conducting a response action at the eligible response site—

"(i) in compliance with a State program that specifically governs response actions for the protection of public health and the environment; and

"(ii) that will provide long-term protection of human health and the environment; or

"(B) the State is actively pursuing an agreement to perform a response action described in subparagraph (A) at the site with a person that the State has reason to believe is capable of conducting a response action that meets the requirements of subparagraph (A).

"(2) PROGRESS TOWARD CLEANUP.—If, after the last day of the 1-year period beginning on the date on which the President proposes to list an eligible response site on the National Priorities List, the President determines that the State or other party is not making reasonable progress toward completing a response action at the eligible response site, the President may list the eligible response site on the National Priorities List.

"(3) CLEANUP AGREEMENTS.—With respect to an eligible response site under paragraph (1)(B), if, after the last day of the 1-year period beginning on the date on which the President proposes to list the eligible response site on the National Priorities List, an agreement described in paragraph (1)(B) has not been reached, the President may defer the listing of the eligible response site on the National Priorities List for an additional period of not to exceed 180 days if the President determines deferring the listing would be appropriate based on—

"(A) the complexity of the site;

"(B) substantial progress made in negotiations; and

"(C) other appropriate factors, as determined by the President.

"(4) EXCEPTIONS.—The President may decline to defer, or elect to discontinue a deferral of, a listing of an eligible response site on the National Priorities List if the President determines that—

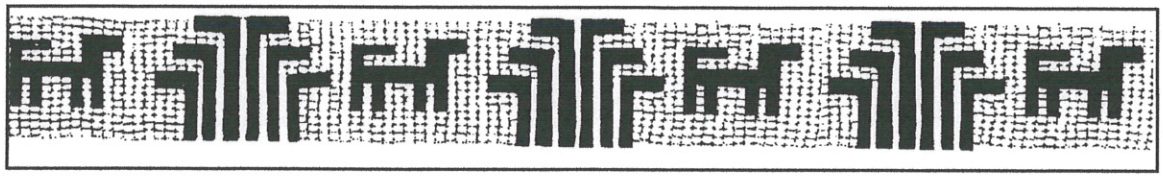
"(A) deferral would not be appropriate because the State, as an owner or operator or a significant contributor of hazardous substances to the facility, is a potentially responsible party;

"(B) the criteria under the National Contingency Plan for issuance of a health advisory have been met; or

"(C) the conditions in paragraphs (1) through (3), as applicable, are no longer being met.".

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.



STATEMENT OF Women/Minority Business Enterprise Program (WMBE) solicitation.

Deborah Burgess
Environmental Protection Agency
Office of Environmrental Cleanup
Washington Operations Office
300 Desmond Drive SE, Suite 102
Lacy, WA 98503

Dear Deborah

It is my understanding in general preference and opportunities for training and employment shall be given to Indians and preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises. The requirement is founded on section 7(b) of the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 e(b)]. In addition, the Environmental Protection Agency under the "Environmental Program Grants for Tribes", ([Federal Register: January 16, 2001 (Volume 66, Number 10)], [Rules and Regulations], [Page 3781-3807] states,

> **Preferences for Indians, Indian organizations, and Indian-owned economic enterprises.**
>
> Section 450e(b) of the Indian Education, Assistance, and Self Determination Act, January 4, 1975 (25 U.S.C. 450et seq.), provides: Any contract, subcontract, grant, or subgrant pursuant to this Act, the Act of April 16, 1934 (48 Stat. 596), as amended (25 U.S.C. 452), or any other Act authorizing federal contracts with or grants to Indian organizations or for the benefit of Indians shall require to the extent feasible
>
> (1) Preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and
>
> (2) Preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77) (25 U.S.C. 1452).
>
> EPA determined that these preference requirements of the Indian Self-Determination Act apply to the award of grants, contracts, subcontracts and subgrants under the grant programs covered by this subpart. In the proposed regulation, EPA asked for comments on implementing this provision, but received none. Since issuing the proposed rule, EPA has determined that the preference requirements of the Indian Self-Determination Act should apply to all grants awarded to Tribes by EPA because they are awarded to Tribes pursuant to statutes authorizing grants to Indian organizations, which includes Tribes and

Intertribal Consortia, or for the benefit of Indians. Therefore, the regulations governing the award of all EPA grants to Tribes at 40 CFR part 31 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) are amended in this rule to reflect the preference requirements of the Indian Self-Determination Act and no comparable provision is included in the final rule for 40 CFR part 35, subpart B. EPA is adding to 40 CFR part 31 a new Sec. 31.38 which provides:

Any contract, subcontract, or subgrant awarded under an EPA grant by an Indian Tribe or Indian Intertribal Consortium that meets the definition and eligibility requirements at 40 CFR part 35, subpart B shall require to the extent feasible

(1) Preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians, as defined in the Indian Self-Determination Act (25 U.S.C. Sec. 405b); and

(2) Preference in the award of subcontracts and sub grants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77) (25 U.S.C. 1452).

In addition, the requirements for procurement under grants are amended to include a cross reference to the new preference provision at 40 CFR 31.38. Specifically, 40 CFR 31.36(b)(1) is amended to provide: Procurement Standards. (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurement actions conform to applicable federal law, the standards identified in this section, and, if applicable, 40 CFR 31.38.

I feel Skokomish Indian Nation is obligated to pursue women and minority owned businesses for such services as required by the Tribe in its business transactions. However, Indian Preference is the principle focus for contracts requested in proposals solicitation as well as in filling vacant positions in the Tribe. Such solicitations are both identified in requests for proposals (RFP's) as well as in classified advertisements for such services. As a sovereign government, the Tribe reserves the right to waive certain policies when deemed necessary due to the nature of Indian Preference.

Hope this helps clarify our position as it pertains to WMBE. If I can be of further help, please contact me.

Keith Dublanica 10/12/04

Keith Dublanica, Director
Skokomish Natural Resources

Skokomish Natural Resources

Telephone: (360) 877-5213 Fax: (360) 877-5148

N.541 Tribal Center Road Skokomish Nation, WA 98584

Exhibit J; Biological Assessment

BIOLOGICAL EVALUATION FOR THE SKOKOMISH NATION'S WASTEWATER TREATMENT FACILITY

Provided for the Indian Health Service and other agencies Prepared by the Skokomish Department of Natural Resources September2002

It is the opinion of Skokomish Indian Nation staff who prepared this BIOLOGICAL ASSESSMENT for the Skokomish Waste Water Treatment Facility, that there is an extremely minimal likelihood, for adversely affecting either listed species, or the supporting habitat of any listed species. As such, this document and subsequent opinion provides * *NOT LIKELY TO ADVERSLY AFFECT (NLAA)* designation for both listed species and/or habitat.

PART I- Endangered or Threatened Species and Habitat Information and Occurrence

Protected species listings within the immediate project area were requested in April 2002 from the following agencies:

- a Army Corps of Engineers (ACOE)
- a National Marine Fisheries Service (NMFS)
- a U.S. Fish and Wildlife Service (USFWS)
- a Washington Department of Fish and Wildlife (WDFW)

Species Information: Affected species (incl. terrestrial)

A. FISH

1. Hood Canal Summer Chum Salmon *(Oncorhynchus keta)*— The project *may affect,* but is not likely to adversely affect summer chum salmon. A *may affect* determination is warranted because the

project involves ground disturbing activities near streams that lead to waters bodies that support summer chum salmon's migration, rearing and/or spawning.

2. Puget Sound Chinook Salmon *(O. tshawytscha)—The* project *may affect,* but is not likely to adversely affect Chinook salmon. A *may affect* determination is warranted because the project involves ground disturbing activities near streams that lead to water bodies that do support Puget Sound Chinook Salmon's migration, rearing, and/or spawning.

3. Puget Sound Bull Trout *(Salvelinus confluentus)*— The project *may affect,* but is not likely to adversely affect bull trout. A *may affect* determination is warranted because the project involves ground disturbing activities near streams that lead to water bodies that do support Bull Trout's migration, rearing, and/or spawning

B. BIRDS

1. Bald Eagle (Haliaeetun *leucocephelus)* —The project *may affect,* but is not likely to adversely affect bald eagles. A *may affect* determination is warranted because the project involves work in close proximity to mature trees which may be foraging and/or roosting habitat for bald eagles. A small population of resident bald eagles occupies the watershed year round. A larger population of migratory bald eagles joins the resident birds in the winter months to feed during the winter salmon runs present in the Skokomish watershed. Eagles can be easily observed feeding on salmon carcasses along the river and other stream corridors during the winter spawning runs. They can also be observed roosting and feeding along Hood Canal and the estuary of the Skokomish River. As no mature nest trees will be affected by this project and no nests are within direct line of sight or within 4,100 feet (0.78 miles) of the proposed wastewater site, no affect to nesting pairs is expected to occur. Roost trees are present within the immediate vicinity of the proposed project; however, these trees are not in direct line of sight to the proposed project footprint and will not be impacted by lighting or construction which will be limited in scope and location, no impact to bald eagles is expected to occur. Bald eagles have been observed soaring above all the project sites.

2. Northern Spotted Owl (Strix *occidentalis)—The* project *may affect,* but is not likely to adversely affect the Northern Spotted Owl. A *may affect* determination is warranted because the owl does live in this watershed. The owl is old growth dependant species. They require old growth for nesting and the multilayered canopy provides relief from predation. According to a USFWS listed species map of the Skokomish watershed, the nearest "owl circle" is about five miles west of the reservation, between the North and the South Forks of the Skokomish River. Old growth timber areas are available in this region. It is the professional opinion of the SNRD staff that it is possible but not probable that the Northern Spotted Owl migrates through or over the project sites, although observations by or reports to SNRD staff do not confirm this theory.

3. Marbled Murrelet *(Brachyramphus marmoratus)*— The project *may affect,* but is not likely to adversely affect the Marbled Murrelet. A *may affect* determination is warranted because the Marbled Murrelet is found in the Skokomish watershed. The Murrelet is an old growth dependant species. The bird only nests on the large limbs of mature conifer trees. According to a USFWS listed species map of the Skokomish watershed, nesting sites are in the upper south fork, although detections of the Marbled Murrelet are wide spread along the watershed corridor. Rarely are the detections of this bird outside of the river corridor. It is the professional opinion of the SNRD staff that it is possible that

the marbled murrelet migrates over or through the proposed wastewater sites, although observations by and reports to SNRD staff do not confirm this theory.

Conclusion

Despite the presence of the listed species in the Skokomish estuary and watershed in which the project resides, the authors of this report, utilizing best professional judgment, believe the above species ARE NOT utilizing habitat in the immediate vicinity of the proposed project, therefore enabling this project to have a ***NOT LIKELY TO ADVERSLY AFFECT (NLAA)*** determination. It is the opinion of the authors of this report, there are no designated critical habitat or listed species in the project area.

Skokomish Natural Resources
Telephone: (360) 877-5213 Fax: (360) 877-5148
N.541 Tribal Center Road Skokomish Nation, WA 98584

Exhibit J; Biological Assessment

BIOLOGICAL EVALUATION FOR THE SKOKOMISH NATION'S WASTEWATER TREATMENT FACILITY

Provided for the Indian Health Service and other agencies Prepared by the Skokomish Department of Natural Resources September2002

It is the opinion of Skokomish Indian Nation staff who prepared this BIOLOGICAL ASSESSMENT for the Skokomish Waste Water Treatment Facility, that there is an extremely minimal likelihood, for adversely affecting either listed species, or the supporting habitat of any listed species. As such, this document and subsequent opinion provides ** NOT LIKELY TO ADVERSLY AFFECT (NLAA)* designation for both listed species and/or habitat.

PART I- Endangered or Threatened Species and Habitat Information and Occurrence

Protected species listings within the immediate project area were requested in April 2002 from the following agencies:

- a Army Corps of Engineers (ACOE)
- a National Marine Fisheries Service (NMFS)
- a U.S. Fish and Wildlife Service (USFWS)
- a Washington Department of Fish and Wildlife (WDFW)

Species Information: Affected species (incl. terrestrial)

A. FISH

1. Hood Canal Summer Chum Salmon *(Oncorhynchus keta)*— The project *may affect,* but is not likely to adversely affect summer chum salmon. A *may affect* determination is warranted because the

project involves ground disturbing activities near streams that lead to waters bodies that support summer chum salmon's migration, rearing and/or spawning.

2. Puget Sound Chinook Salmon *(O. tshawytscha)—The* project *may affect,* but is not likely to adversely affect Chinook salmon. A *may affect* determination is warranted because the project involves ground disturbing activities near streams that lead to water bodies that do support Puget Sound Chinook Salmon's migration, rearing, and/or spawning.

3. Puget Sound Bull Trout *(Salvelinus confluentus)*— The project *may affect,* but is not likely to adversely affect bull trout. A *may affect* determination is warranted because the project involves ground disturbing activities near streams that lead to water bodies that do support Bull Trout's migration, rearing, and/or spawning

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Exhibit K: Cultural Resources Assessment

TO: Skokomish Natural Resources
FROM: Gary Wessen, Skokomish Tribal Archaeologist
DATE: 11/08/02
RE: Cultural Resources Report on the WSDOT Property/Proposed Wastewater Treatment Facility located in T21 N, R4W, Section 2.

There are no recorded archaeological sites either within or in immediate vicinity of the WSDOT site. Similarly, there are no recorded Traditional Cultural Properties (TCPs) either within, or in its immediate vicinity of this location. However, there are both recorded sites and recorded TCPs within about a mile of the site. The recently developed Skokomish Archaeological Sensitivity Model ranks the sensitivity of the area as "Moderate."

The WSDOT site is very badly disturbed. It has been graded and possibly had some fill dumped on it as well. The disturbed condition probably minimizes the sites potential to contain significant cultural resources.

At the same time, there is no real information about how deep the disturbance has been. Additionally, there is no information regarding how deep the impacts associated with your project might be. Thus it is possible that the impacts might reach depths below the disturbance and that undisturbed deposits could be affected. At the moment, it cannot be concluded that the lower deposits could not contain potentially significant cultural resources.

In the event that cultural resources are discovered at this location, it is advisable that the Skokomish Tribe cease work and consult the Tribal Historic Preservation Office to determine the appropriate response and course of action.

14c. Local Funding			

PART VI – PROPERTY OWNERSHIP INFORMATION
(mandatory for cleanup and RLF grant recipients only; optional for assessment grant recipients)

15. During the life of the grant, did ownership change?	**16.** Did Superfund federal landowner liability protections factor into the ownership change?
☐ Yes ☐ No	☐ Yes ☐ No ☐ Unknown

PART VII – ANECDOTAL PROPERTY INFORMATION (optional for all grant recipients)

17. Property Highlights

18. Property Photograph Information

18a. Photographs Available	**18b.** Video Available
☐ Yes ☐ No	☐ Yes ☐ No

PART VIII - APPROVALS

19. Grant Recipient Project Manager

Name	Signature	Date
Ron Figlar-Barnes		05/09/05

20. US EPA Regional Representative

Name	Signature	Date

Skokomish Natural Resources

Telephone: (360) 877-5213 Fax: (360) 877-5148

N.541 Tribal Center Road **Skokomish Nation, WA 98584**

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REQUEST FOR PROPOSALS

1. **PROPOSALS** are requested from the Skokomish Economic Development Department for an Environmental Assessment of the WSDOT Potlatch Maintenance Yard in accordance with the attached Scope of Work for:

The Skokomish Indian Tribe
Economic Development Department
N. 80 Tribal Center Road
Shelton, WA 98584
360.427.6936

a. **Form**: Each Proposal shall be submitted on a standardized form available from the Tribe at the above address. Each Proposal shall be submitted in a sealed envelope bearing the title "Skokomish Brownfield WSDOT Potlatch Maintenance Yard Environmental Assessment" and the name of the person submitting the Proposal. The Proposal accepted by the Tribe shall be included as part of the Contract.

b. **Discrepancies:** In case of a difference between the stipulated amount of the Proposal written in words and the stipulated amount written in figures, the stipulated amount stated in written words shall govern.

c. **Modifications:** Proposals shall not contain any recapitulations of the work to be done. Alternate proposals will not be considered unless called for. Oral proposals or modifications will not be considered.

d. **Examination of Scope of Work and Visit to Site:** Before submitting a Proposal, Bidders shall carefully review this Request for Proposals, Scope of Work, and accompanying documents; may visit the site of work; and shall fully inform themselves as to all existing conditions and limitations and include in the Proposal a sum to cover the cost of all items included in the Scope of Work and Contract.

e. **Delivery of Proposals**: Proposals shall be delivered to the above address by May 14th, at 5 p.m. It is the sole responsibility of the Bidder to see that his Proposal is received in proper time. Any Proposal received after the scheduled closing time for receipt of Proposals shall be returned to the Bidder unopened.

f. **Withdrawal**: Any Bidder may withdraw his Proposal, either personally or by telegraphic or written request, at any time prior to the scheduled closing time for receipt of Proposals.

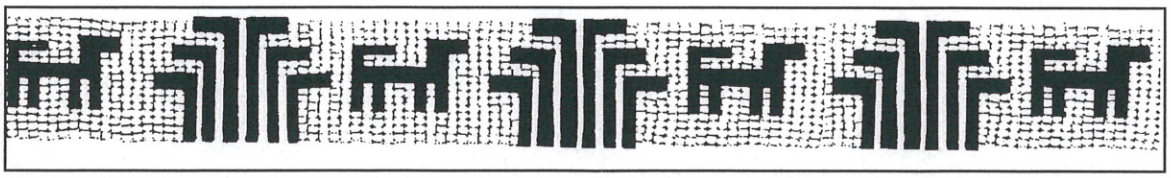
g. **Opening**: Proposals will be opened and publicly read aloud on May 18th, 2004 at 10a.m. at the Skokomish Tribal Center, Tribal Council Chambers, N. 80 Tribal Center Road, Skokomish Indian Reservation, Mason County, State of Washington.

h. **Award or Rejection:** The Contract will be awarded to the lowest and/or best qualified, responsible **Skokomish Tribal Member** Bidder complying with these instructions. In the event that no Proposal is submitted by a qualified, responsible Skokomish Tribal Member, the Contract will be awarded to the lowest and/or best qualified, responsible Bidder who is a **member of a federally recognized Indian Tribe** complying with these instructions. In the event that no Proposal is submitted by a qualified, responsible member of a federally recognized Indian Tribe, the Contract will be awarded to the lowest and/or best qualified, responsible Bidder complying with these instructions. **The Tribe reserves the right to reject any or all Proposals or to waive any formality or technicality in any Proposal in the interest of the Tribe**. No Bidder may withdraw his Proposal for a period of thirty days after the date of opening thereof.

2. **INTERPRETATION OF DOCUMENTS:** If any person contemplating submitting a Proposal is in doubt as to the true meaning of any part of this Request for Proposals, the Scope of Work, the Contract, or the standardized Proposal form or finds discrepancies, omissions, or inconsistencies in these documents, that person may submit to the Tribe a written request for an interpretation or correction. The person submitting the request will be responsible for its prompt delivery. Any interpretation or correction of the documents will be made only by Addendum issued by the Tribe, and a copy of the Addendum will be mailed or delivered to each person who has requested the standardized Proposal form. The Tribe will not be responsible for any other explanations or interpretations of the Contract documents.

3. **ADDENDA:** Any addenda issued by the Tribe during the time for submission of proposals, or forming a part of the Contract documents, shall be covered in the Proposal, and shall be made a part of the Contract. Receipt of each Addendum shall be acknowledged in the Proposal. No addenda shall be included in any Proposal except such addenda as may be issued by the Tribe.

4. **BIDDERS INTERESTED IN MORE THAN ONE PROPOSAL:** No one shall be allowed to submit more than one Proposal for the same work, unless alternate Proposals are called for.



REQUEST FOR PROPOSALS

1. On behalf of the Skokomish Tribal Council **PROPOSALS** are requested from its Skokomish Natural Resources Department, in collaboration with the Skokomish Community Development. An Environmental Assessment is requested of the former Washington State Department of Transportation's Potlatch Maintenance Yard, located within the Skokomish Indian Reservation boundaries, in accordance with the attached Scope of Work. The proposal is to be provided to :

The Skokomish Indian Tribe
Natural Resources Department
c/o N.80 Tribal Center Road
Shelton, WA 98584
360.427.6936

a. **Form**: Each Proposal shall be submitted on a standardized form available from the Tribe at the above address. Each Proposal shall be submitted in a sealed envelope bearing the title "Skokomish Brownfield WSDOT Potlatch Maintenance Yard Environmental Assessment" and the name of the person submitting the Proposal. The Proposal accepted by the Tribe shall be included as part of the Contract.

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f. **Withdrawal**: Any Bidder may withdraw his Proposal, either personally or by telegraphic or written request, at any time prior to the scheduled closing time for receipt of Proposals.

g. **Opening**: Proposals will be opened and publicly read aloud on November 3rd , 2004 at 3 p.m. at the Skokomish Tribal Center, Tribal Council Chambers, N. 80 Tribal Center Road, Skokomish Indian Reservation, Mason County, State of Washington.

h. **Award or Rejection:** The Contract will be awarded to the lowest and/or best qualified, responsible **Skokomish Tribal Member** Bidder complying with these instructions. In the event that no Proposal is submitted by a qualified, responsible Skokomish Tribal Member, the Contract will be awarded to the lowest and/or best qualified, responsible Bidder who is a **member of a federally recognized Indian Tribe** complying with these instructions. In the event that no Proposal is submitted by a qualified, responsible member of a federally recognized Indian Tribe, the Contract will be awarded to the lowest and/or best qualified, responsible Bidder complying with these instructions. **The Tribe reserves the right to reject any or all Proposals or to waive any formality or technicality in any Proposal in the interest of the Tribe**. No Bidder may withdraw his Proposal for a period of thirty days after the date of opening thereof. Award will be made within 7 business days.

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Brownfield WSDOT Potlatch Maintenance Yard Environmental Assessment
SCOPE OF WORK
Revised October 7, 2004

Project Overview

This is a project to complete an environmental assessment on the Washington State Department of Transportation (WSDOT) Potlatch Maintenance Yard located along U.S. 101, (LEGAL DESCRIPTION) within the Skokomish Indian Reservation. The environmental assessment will include the following: *hydrogeological contamination assessment for PCBs, lead, mercury, petroleum products, and any other toxic substances as identified by the Dangerous Waste Generic Sources "F" Code List from* ***WAC 173-303-9904****.*

The environmental assessment will involve approximately forty (40) hours of site sample collection, approximately one hundred twenty (120) hours of sample analysis, and approximately forty (40) hours of report generation. The successful bidder will need to include: *a detailed budget including personnel, supplies, equipment, testing fees, report reproduction fees, and travel.* Additionally, the successful bidder will need to include: *a timeline to include estimated start and completion dates for the sample, analysis, and reporting functions.*

Project Considerations

Sample and specimen collection should be relatively simple as there are already several test wells on the property. However, drilling of additional test wells may be required depending on the location and conditions of the pre-existing test wells. Soil samples are expected to be collected at varied sites. Sampling activities should be accomplished with a project crew of approximately two (2) to three (3) technicians.

Site access to the WSDOT Potlatch Maintenance Yard is through a single locked gate, located at mile marker of Highway 101 on the west side of the road. Depending on precipitation, the WSDOT Maintenance Yard may have soft soils in certain areas. If soft or water logged soils are present, potential vehicular mobility issues may occur. However, the study site of 14+ acres is located within a fenced area and parking proximal to the study site(s) should neither pose a problem, nor prevent access. Traffic by foot is expected. It is expected that sampling for ambient conditions PRIOR to a heavy rain event, and immediately thereafter are appropriate to collect.

Water or electricity access are not present on the WSDOT Potlatch Maintenance Yard. A gas-powered generator may be required by the contractor, to be determined.

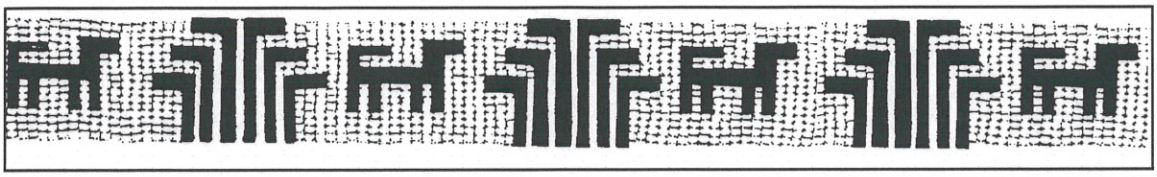
Restroom facilities are not present on the WSDOT Potlatch Maintenance Yard. There are sites in the area

Consultant's Responsibilities

The Consultant is expected to:

1. Assume financial responsibility for payment of all 3rd party testing and laboratory fees.
2. Assume financial responsibility for payment of all copying, printing, and reproduction fees.
3. Provide copies of all field notes and preliminary lab reports upon completion of contract.
4. Complete and be responsible for the EPA's Quality Assurance Project Plan (QAPP) to be turned in at the completion of the project
5. Provide four (4) copies of the final contamination assessment report.

Received 10/14/04



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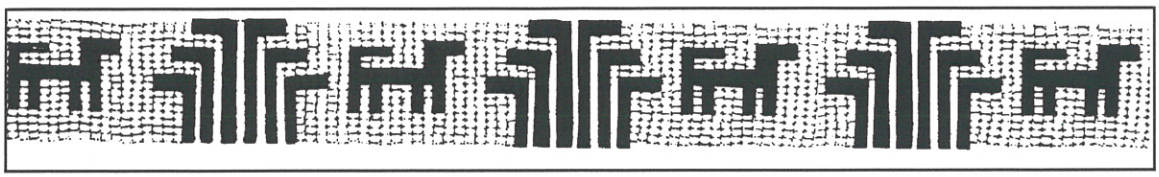

Brownfield WSDOT Potlatch Maintenance Yard Environmental Assessment
SCOPE OF WORK
Revised October 7, 2004

Project Overview
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Project Considerations
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Site access to the WSDOT Potlatch Maintenance Yard is through a single locked gate, located at mile marker of Highway 101 on the west side of the road. Depending on precipitation, the WSDOT Maintenance Yard may have soft soils in certain areas. If soft or water logged soils are present, potential vehicular mobility issues may occur. However, the study site of 14+ acres is located within a fenced area and parking proximal to the study site(s) should neither pose a problem, nor prevent access. Traffic by foot is expected. It is expected that sampling for ambient conditions PRIOR to a heavy rain event, and immediately thereafter are appropriate to collect.

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4. Complete and be responsible for the EPA's Quality Assurance Project Plan (QAPP) to be turned in at the completion of the project
5. Provide four (4) copies of the final contamination assessment report.

Proposed Timeline

Response to Indian Preference Pre-Qualification Request and Proposal Form due Monday November 1, 2004 by 3:00 p.m. It is the Vendors responsibility to insure delivery of proposal is provided by due date. Postmarks of November 1st will not be honored, nor will facsimiles or e-mail (???). (we may accept e-mail) Opening of bid documents is tentatively scheduled for 4:00PM November 1st in the Tribal Council Room.

Accounting Department
The Skokomish Indian Tribe
North 80 Tribal Center Road
Shelton, Washington 98584
(360) 426-4232, fax (360) 877-5943.

- Contract between chosen the Consultant(s) and the Skokomish Indian Tribe due 3:00 PM November 1st , 2004.
- Bid opening TENTATIVELY scheduled for 4:00PM November 1st, 2004 at the Skokomish tribal Center.
- Environmental assessment activities as defined by contract(s) are to begin by November 5th, 2004.
- Environmental assessment activities are to end no later than, May 1, 2005.
- Final Report due July 31st, 2005.

Indian Preference Pre-Qualification Request

Form Attached

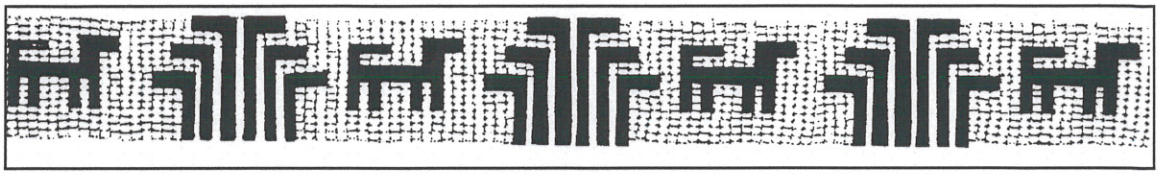
Proposal Form

Form Attached

Interested individuals and firms shall submit the Indian Preference Pre-Qualification Request and Proposal Form including the following information:

- Resume for each individual of the team who will be working directly on this project.
- Individual or firm's related work experience
- How you will approach the environmental assessment process.

If you have any questions, please contact the Skokomish Indian Tribe's Contracts Officer @ (360) 426-4232.



INDIAN PREFERENCE

The Indian Preference Policy of the Skokomish Indian Tribe entitles applicants who are enrolled Skokomish tribal members, or businesses owned by Skokomish tribal members, to first consideration for contracts, followed by enrolled members of other federally recognized Indian tribes, or businesses owned by them. Bidders for contracts who are not entitled to claim such preference or who fail to claim it shall be considered without regard to ethnic/national origin, gender, marital status, sexual orientation, religion or disability status.

Any contractors claiming Indian Preference must submit the Qualification for Indian Preference: Contractors form below.

QUALIFICATION FOR INDIAN PREFERENCE: CONTRACTORS

NAME: _____

ADDRESS: _____

_____

CONTACT PERSON: _____

The following documents must, at a minimum, be attached to this application:

1. Proof of membership by the contractor or its owner(s) in an Indian Tribe, Band, Nation or organized Native American group or community recognized by the United States Government.
2. A corporation must attach certification of the number and ownership of shares of stock, identifying those shares owned by Indians.
3. Copies of any applicable registrations of business formation.
4. Copies of any applicable business licenses.
5. Copy of the professional license(s) of the person(s) who will be performing the services.
6. Proof of insurance coverage for the business and the person(s) who will be performing the services
7. Professional resume(s) of the person(s) who will be performing the services.

Complete the following statements by answering "yes" or "no" to each question and filling in the requested explanations:

1. Do Indians own at least 51% of the business? ____

2. Do Indians comprise at least 51% of the management of the business? _____

3. Do Indians comprise at least 51% of the employees of the business? _____

4. Do the Indian owners receive a share of the business profits equal to their proportional ownership? ____ ____ If not, explain:_____
_____
_____
_____

5. Do the Indian employees of the business collectively receive at least 51% of the employment compensation (salaries, benefits, etc.) expended by the business?__ If not, explain:_____
_____
_____
_____
_____

6. Does any entity other than the owners of the business, such as a financing agent, have practical control of the business?_____If so, is this entity Indian-owned?_____Please explain the basis for your belief that this entity is Indian-owned? _____
_____
_____
_____
_____

7. Does any entity other than the owners and employees of the business, such as a leasing agent or subcontractor, have control over a share of the earnings of the business? ___ If so, are any of these entities non-Indian owned?_____ If so, what percentage of the earnings of the business are controlled by non-Indian owned entities? _____

8. Does the business have binding financial arrangements with any other entity which will apply to the Skokomish Indian Tribe's project?_____ If so, are any of these entities non-Indian owned? If so, what percentage, of the income from the Skokomish project is bound over to the non-Indian owned entity?_____

I, _____, represent to the Skokomish Indian Tribe that I am authorized on behalf of the applicant business to complete this application and make the representations contained in it and that I understand the Skokomish Tribe will be relying upon the representations contained in this application and will be incurring legal obligations based upon the accuracy of those representations. I am authorized to agree on behalf of the applicant business to indemnify and hold the Skokomish Indian Tribe harmless from any losses created by any misrepresentation contained in this application and do so agree.

Signature: _____

Print Name: _____

Title: _____

Date: _____

OMB Circular No. A-87

COST PRINCIPLES FOR STATE, LOCAL AND
INDIAN TRIBAL GOVERNMENTS

http://www.whitehouse.gov/omb/circulars/a087/toc.html
see attachment B, #32

32. Pre-award costs. Pre-award costs are those incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the written approval of the awarding agency.